

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

C.R.P.(PD) No.2240 of 2016
and
C.M.P. No.11628 of 2016

Edelweiss Asset Reconstruction Company
Edelweiss House, Off C.S.T. Road Kalina
Chennai - 98

.. Petitioner

Vs.

1.Vintage Foods & Industries Ltd.,
No.273, Mysore Road
Bangalore - 560 026 and its
Head office at
No.222/14, 15th Main, Sadashivnagar
Bellary Road, Bangalore - 560 080
Presently at:
No.225/15, New No.29
13th Cross, 5th Main
Vyalikaval, Bangalore - 560 003

2.N.K.Mohta

3.Mrs.Sarita Mohta

.. Respondents

Civil Revision Petition filed against the Order dated 11.03.2015 made in MA No.131 of 2103 on the file of the Debts Recovery Appellate Tribunal at Chennai reversing the order dated 6.11.2013 in IA No.1488 of 2013 in OA No.326 of 2002 on the file of the Debts Recovery Tribunal, Bangalore.

For Petitioner : Mr.Srinath Sridevan

For Respondent : Mr.B.Dhanraj

ORDER

(Delivered by **S.MANIKUMAR, J.**)

Challenge in this civil revision petition is to the order made in M.A. No.131 of 2013 dated 11.03.2015 passed by the Debts Recovery Appellate Tribunal, Chennai.

2. Facts deduced from the supporting affidavit and the materials on record are that, originally Export and Import Bank of India, through its General Manager, Bangalore, has filed O.A. No.326 of 2002 against Vintage Foods & Industries Ltd, represented by its Managing Director and five others, for the following reliefs:

(a) This Hon'ble Tribunal be pleased to issue a Recovery Certificate to the Applicant to recover from the Defendant Nos.1 to 3 jointly and severally an aggregate sum of Rs.21,76,42,758.42 in respect of the Loan and the Funded Interest Loan, as more particularly set out in the said Statement of Claim, produced herewith and marked as Annexure 'N' to this Application, (including stamp duty of Rs.6,00,000/- and incidental expenses incurred by the Applicant on behalf of Defendant No.1 in respect of the Deed of Simple Mortgage dated 4.5.2002, as requested by Defendant No.1 vide its letter dated 28.2.2002 produced herewith and marked as Annexure "Q") together with

further interest at the rate of 17% per annum and additional interest by way of liquidated damages @ 2% per annum from the date of the Application till payment.

(b) this Hon'ble Tribunal be pleased to declare that:-

(i) The movable fixed assets of the 1st defendant (as more particularly described in Annexure 'B-1' to this Application), are legally and validly hypothecated and charged in favour of the Applicant towards the payment of the amounts due by the 1st Defendant to the Applicant as more particularly set out in the Statement of Claim annexed as Annexure 'N' to this Application.

(ii) The immovable properties of the 2nd defendant at Southgowdana village and Gokere village, Bangalore District, in Karnataka (as more particularly described in Annexure 'F-1' to this Application) are legally and validly mortgaged in favour of the Applicant and that the Applicant is entitled to enforce the same.

(iii) The immovable properties of the 1st defendant situate at Plot No.21/B KIADB Industrial Area, Phase II, Survey No.97 of Kumbalgodu Village, Bangalore and Plot No.222/14, 5th Main Corner, Bellary Road, Sadashivnagar, Bangalore - 560 080, both in the State of Karnataka, (as more particularly described in Annexure 'C-1' hereto) and also at Survey Nos.523/1B and 524/2, Athiyur Village, Tirupattur, Vellore District, in the State of Tamil Nadu (as more particularly described in Annexure 'D-1' hereto), are legally and validly mortgaged in favour of the Applicant and that the Applicant is entitled to enforce the same.

(c) (i) this Hon'ble Tribunal be pleased to order attachment and sale of the immovable properties of the

1st defendant described in Annexure 'C-1' and 'D-1' by way of enforcement of the mortgage(s) created by the 1st defendant in favour of applicant. (ii) This Hon'ble Tribunal be pleased to order attachment and sale of the immovable property of the 2nd defendant as detailed in Annexure 'F-1' here to) by way of enforcement of the Mortgage by deposit of title deeds created by 2nd defendant in favour of applicant.

(d) this Hon'ble Tribunal be pleased to appoint such person as it may deem fit as Receiver of the said immovable properties of the 1st defendant situate at Kumbalgodu village and at Sadashivnagar in Bangalore (as detailed in Annexure 'C-1' and 'D-1') and of the Movable Fixed Assets of the 1st Defendant (briefly described in Annexure 'B-1' to this Application), with all powers as provided by law, including the power of sale and direct the Receiver to sell the said immovable properties and the said movable fixed assets on such terms and conditions as this Hon'ble Tribunal may deem fit and hand over the sale proceeds to the applicant towards satisfaction of the applicant's claim herein according to its entitlement and in case of any shortfall to recover the same from the defendant Nos.1 to 3.

(e) this Hon'ble Tribunal be pleased to appoint such person as it may deem fit as Receiver of the immovable properties of the 2nd defendant at Southegowdana village and Gokere village in Karnataka (as more particularly described in Annexure 'F-1' to this application), with all powers as provided by law, including the power of sale and direct the Receiver to sell the said immovable properties on such terms and conditions as this Hon'ble

Tribunal may deem fit and hand over the sale proceeds to the applicant towards satisfaction of the applicant's claim herein, and in case of any shortfall to recover the same from the defendant Nos.1 to 3.

(f) this Hon'ble Tribunal be pleased to issue a permanent injunction to restrain the defendant Nos.1 to 3 by themselves, or through their servants, agents, attorneys or through any person or party acting for or on behalf of these defendants from selling, alienating, encumbering, leasing or creating any type of third party rights in respect of:-

(i) the 1st defendant's hypothecated movable fixed assets (as briefly described in Annexure 'B-1' to this application) or any part thereof.

(ii) the 1st defendant's immovable properties at Kumbalgodu village and Sadashivnagar in Bangalore (as briefly described in Annexure 'C-1' to this application), or any part thereof.

(iii) The immovable property of the 1st defendant in Tamil Nadu as described in Annexure 'D-1' to this Application.

(iv) the immovable properties of the 2nd defendant at Southegowdana village and Gokere village in Bangalore (as briefly described in Annexure 'F-1' to this application), which are exclusively mortgaged in favour of applicant, or any part thereof

(g) for costs"

3. Respondents have filed I.A. No.1408 of 2013 in O.A. No.326 of 2002, for a direction to Export and Import Bank of India, to furnish

details of the monies realised by them on account of defendants/respondents with supportive statements and accounts.

4. By filing a counter affidavit, Export and Import Bank of India, has opposed the prayer sought for.

5. Adverting to the rival contentions, Debts Recovery Tribunal, Bangalore, vide order dated 06.11.2013, dismissed I.A. No.1488 of 2013. Thereafter, on 24.02.2014, Edelweiss Asset Reconstruction Company, has come on record as applicant in O.A.No.326 of 2002.

6. Being aggrieved by the dismissal of I.A. No.1488 of 2013, respondents, namely, Vintage Foods and Industries Ltd and others have filed an appeal in M.A. No.131 of 2013 before the Debts Recovery Appellate Tribunal, Chennai. After observing that some of the insurance claim has been assigned and also paid by insurer to the banker, and that the same has been suppressed for five years, the Debts Recovery Appellate Tribunal, Chennai dated 11.03.2015 in M.A. No.131 of 2013, at paragraph No.3, ordered as hereunder:

"3. It appears that the argument advanced by the appellants' counsel is having some force. After receiving the amount from the insurance company, the banker has suppressed the amount for the past five years is highly condemnable one and further the counter filed by the

party, the counsel is also new to this case. He can at liberty to file counter or on the instruction of party advocate is at liberty to file counter objection and certainly not by the counter statement. The statement of objections alone has been filed by the bank (page Nos.44 to 46 of the typedset). Counter has not been filed by the party concerned. At this juncture, the respondent is directed to file the Statement of Account from the date of the OA and serve within 3 days to the appellant's counsel. In the event of failure, the appellants are at liberty to get Rs.10,000/- towards damages and it is liable to be deducted in the Statement of Account from the date of the OA within 15 days from the date of receipt of this order, the Debts Recovery Tribunal, Bangalore, is directed to dismiss the OA granting liberty after getting the full details the banker can file a suit within three months thereafter."

7. Being aggrieved against the order of the Debts Recovery Appellate Tribunal, Chennai dated 11.03.2015 made in M.A. No.131 of 2013, instant civil revision petition has been filed on the grounds *inter alia* that the Debts Recovery Appellate Tribunal, Chennai, has failed to consider that the Statement of Accounts was only a piece of evidence enabling the applicant bank to prove its claim. The failure to file the statement of accounts could only result in the applicant being unable to rely on the same to prove the claim. However, the applicant can always adduce evidence to prove the claim, by relying on the original cause of

action, *de hors* the statement of accounts. Therefore, the order of the Debts Recovery Appellate Tribunal, Chennai directing dismissal of the OA for non filing of Statement of Accounts must be held to be only a direction issued in "terroram".

8. On this day, when the matter came up for hearing, Mr.Srinath Sridevan, learned counsel for the petitioner submitted that there were two directions in the order passed by the Debts Recovery Appellate Tribunal, Chennai. One of the directions to serve the statement of accounts from the date of original application within three days to the learned counsel for the respondents has been complied with and that an e-mail has been sent. The second direction of DRAT, Chennai, is to file statement of accounts from the date of OA, should be filed in Debts Recovery Tribunal, Chennai, within 15 days from the order of DRAT, could not be complied with.

9. According to the learned counsel for the petitioner, Debts Recovery Tribunal, Bangalore, has dismissed O.A. No.326 of 2002 implicitly, against which, an appeal in R.A. (SA) No.7 of 2016 has been filed before the Debts Recovery Appellate Tribunal, Chennai. Though correctness of the order of Debts Recovery Tribunal, Bangalore, in dismissing O.A. No.326/2002 is tested, literally, there is no defence before the Debts Recovery Appellate Tribunal, as DRT, has acted on the

directions of the Appellate Tribunal. Therefore, the learned counsel for the petitioner submitted that unless and until order passed by the Debts Recovery Appellate Tribunal, Chennai, in M.A. No.131/2013 dated 11.03.2015, is interfered with, the writ petitioner would be deprived of a huge claim of public money. According to him, bank has been inflicted with a capital punishment of dismissal of O.A. No.326/2002, for the only default in not submitting the statement of accounts to the Debts Recovery Tribunal, Bangalore. Even taking it for granted that the statement of accounts not been submitted within the period of 15 days, Debts Recovery Appellate Tribunal, Chennai, could have directed the Tribunal to draw an adverse inference or directed the DRT, Bangalore, to proceed with the matter, in the absence of statement of accounts. By issuing directions to the Debts Recovery Tribunal, Bangalore, to dismiss O.A. No.326 of 2002, DRAT, Chennai, has granted a bonanza to the respondents, in the matter of recovery. For the above said reasons, he prayed to interfere with the order impugned.

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10. Per contra, by inviting the attention of this court to the sequence of events from 2002, failure of the bank in not accounting for the insurance claim, Mr.B.Dhanraj, learned counsel for the respondents 1 to 3 submitted that order of DRAT, Chennai in M.A. No.131 of 2013, dated 11.03.2015, does not call for any interference, as the bank has

failed to submit the statement of accounts to the Debts Recovery Tribunal, Bangalore. He further submitted that, as per the direction of the Appellate Tribunal, DRT, Bangalore, has dismissed O.A. No.326/2002 on 29.09.2015 and an appeal in R.A. (S.A.) No.7 of 2016 has been preferred before the Debts Recovery Appellate Tribunal, Chennai, by the petitioner herein.

11. He further submitted that When the consequential order of dismissal by DRT is tested by way of appeal, the challenge to the initial order i.e. order in M.A. No.131 of 2013 dated 11.03.2015 impugned before us, has no legs to stand and therefore, instant civil revision petition is not maintainable. Arguments have also been advanced on the merits of the claim made by the bank.

Heard the learned counsel for the parties and perused the material on record.

12. Adverting to the contention of the learned counsel for the respondents that the insurance money received by the bank, has not been accounted for, DRAT, Chennai has observed and ordered as hereunder:

"After receiving the amount from the Insurance Company, the banker has suppressed the amount for the five years is highly condemnable one.."

13. On the aspect of non-furnishing the statement of accounts, Debts Recovery Appellate Tribunal, Chennai in M.A. No.131 of 2013 dated 11.03.2015, has ordered, the writ petitioner to file the statement of accounts from the date of OA and serve within three days to the learned counsel for the respondents herein.

14. DRAT, Chennai, has further ordered that in the event of failure, the respondents are at liberty to get Rs.10,000/- towards damages and it should be deducted in the statement accounts.

15. DRAT, Chennai, has further observed that the concerned Manager has failed in his duty to file counter before the Tribunal.

16. Contention of Mr.Srinath Sridevan, learned counsel for the petitioner that within three days of the order made in M.A. No.131 of 2013 dated 11.03.2015, statement of accounts from the date of OA, has been e-mailed to the learned counsel for the respondents, is not disputed. Non-filing of the statement of accounts from the date of OA within 15 days from the date of receipt of the order to the Tribunal is admitted.

17. Question to be considered is, *whether for non-filing of the Statement of Accounts to the Tribunal, the appellate forum DRAT,*

Chennai should give a direction for dismissal of the original application No.326 of 2002, filed?

18. As rightly contended by the learned counsel for the petitioner, if for any reasons, statement of accounts from the date of Original Application could not be filed within 15 days from the date of the order made in M.A. No.131 of 2013 dated 11.03.2015, on the file of DRAT, Chennai, DRT, Bangalore could have been directed to proceed with the available records, and pass orders, on the merits of rival contentions. When trial of the original application No.326/2002 was pending on the file of DRT, Bangalore, Appellate Tribunal in M.A. No.131 of 2013, has drawn an adverse inference against the bank, for the failure to submit statement of accounts, in support of the debt claimed in the original application.

19. Perusal of the order impugned before us also shows that DRT, Bangalore, has been directed to dismiss the OA, granting liberty, after getting the full details, the banker has to file a suit within three months thereafter.

20. For non-submission of the Statement of Accounts, from the date of Original Application within 15 days of the order of the Appellate Tribunal, Debts Recovery Tribunal, Bangalore, has dismissed O.A. No.326/2002, against which S.A.(RA) No.7/2016 has been filed.

21. Question to be addressed is, when the consequential order of DRT, Bangalore dismissing O.A. No.326 of 2002 is assailed in R.A. (S.A.) No.7 of 2016, whether the initial order made in M.A. No.131 of 2013 dated 11.03.2015 on the file of DRAT, Chennai can be independently assailed?

22. When the Appellate Tribunal has passed an order, directing DRT, Bangalore to dismiss the original application, for the above said reason, DRT, Bangalore, which is hierarchically subordinate, is bound to implement the order passed by the Appellate forum. Thus, DRT, has implicitly, dismissed O.A. No.326 of 2002. Though an appeal in R.A.(S.A.) No.7 of 2016, has been filed, challenging the dismissal order, DRAT, Chennai, cannot review the order made in M.A. No.131 of 2013 passed in the year 2015.

23. When jurisdiction is conferred on the Debts Recovery Tribunal to adjudicate the claim, on the basis of the rival contentions and evidence to be adduced, directing the Tribunal to dismiss the OA, on the failure to submit the statement of accounts, in our view amounts to excess of jurisdiction. The Appellate Tribunal has been called upon to decide as to whether dismissal of I.A. No.1488/2013 is correct or not? At this juncture, we deem it fit to extract the prayer, sought for in I.A. No.1448/2013 in O.A. No.326/2002 on the file of DRT, Bangalore,

"For the reasons stated in the accompanying affidavit, the defendants 1 to 3 in the above case, most respectfully prays that, this Hon'ble Tribunal be please to direct the Applicant Bank to furnish the details of the monies realized by them, on account of these Defendants with entire supportive Statements of Accounts and pass any other order as this Hon'ble Tribunal deems fit in this circumstances, in the interest of justice and equity."

24. De hors the procedure set out in the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994, DRAT, Chennai has directed dismissal of OA, which has caused grave injustice to the bank. Appellate Tribunal has no powers to curtail the independency and the power of DRT. When the order of the DRAT, Chennai, has practically shut down the evidence to be produced by the applicant, de hors non-production of statement of records, there is a violation of the principles of natural justice.

25. Jurisdiction, powers and authority of the Tribunals, is set out in Section 17 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the same reads as follows:

"17. Jurisdiction, powers and authority of Tribunals:- (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such

banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

26. Procedure to be followed by the Tribunal, when application is filed, is detailed in Section 19 of the RBI Act, 1935 and the same is extracted hereunder:

"19. Application to the Tribunal:- (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,-

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises.

(2) Where a bank or a financial institution, which has to recover its debt from any person, has filed an application to the Tribunal under sub-section (1) and against the same person another bank or financial institution also has claim to recover its debt, then, the later bank or financial institution may join the applicant bank or financial institution at any stage of the

proceedings, before the final order is passed, by making an application to that Tribunal.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and accompanied by such documents or other evidence and by such fee as may be prescribed:

Provided that the fee may be prescribed having regard to the amount of debt to be recovered:

Provided further that nothing contained in this sub-section relating to fee shall apply to cases transferred to the Tribunal under sub-section (1) of section 31.

(4) On receipt of the application under sub-section (1) or sub-section (2), the Tribunal shall issue summons requiring the defendant to show cause within thirty days of the service of summons as to why the relief prayed for should not be granted.

(5) The defendant shall, at or before the first hearing or within such time as the Tribunal may permit, present a written statement of his defence.

(6) Where the defendant claims to set-off against the applicant's demand any ascertained sum of money legally recoverable by him from such applicant, the defendant may, at the first hearing of the application, but not afterwards unless permitted by the Tribunal, present a written statement containing the particulars of the debt sought to be set-off.

(7) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Tribunal to pass a final order in respect both of the original claim and of the set-off.

(8) A defendant in an application may, in addition to

his right of pleading a set-off under sub-section (6), set up, by way of counter-claim against the claim of the applicant, any right or claim in respect of a cause of action accruing to the defendant against the applicant either before or after the filing of the application but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

(9) A counter-claim under sub-section (8) shall have the same effect as a cross-suit so as to enable the Tribunal to pass a final order on the same application, both on the original claim and on the counter-claim.

(10) The applicant shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Tribunal.

(11) Where a defendant sets up a counter-claim and the applicant contends that the claim thereby raised ought not be disposed of by way of counter-claim but in an independent action, the applicant may, at any time before issues are settled in relation to the counter-claim, apply to the Tribunal for an order that such counter-claim may be excluded, and the Tribunal may, on the hearing of such application, make such order as it thinks fit.

(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.

(13) (A) Where, at any stage of the proceedings, the

Tribunal is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him,--

(i) is about to dispose of the whole or any part of his property; or

(ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or

(iii) is likely to cause any damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of the debt, or to appear and show cause why he should not furnish security.

(B) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(14) The applicant shall, unless the Tribunal otherwise directs, specify the property required to be attached and the estimated value thereof.

(15) The Tribunal may also in the order direct the

conditional attachment of the whole or any portion of the property specified under sub-section (14).

(16) If an order of attachment is made without complying with the provisions of sub-section (13), such attachment shall be void.

(17) In the case of disobedience of an order made by the Tribunal under sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order—

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and

(e) appoint a Commissioner for preparation of an

inventory of the properties of the defendant or for the sale thereof.

(19) Where a certificate of recovery is issued against a company registered under the Companies Act, 1956 (1 of 1956) the Tribunal may order the sale proceeds of such company to be distributed among its secured creditors in accordance with the provisions of section 529A of the Companies Act, 1956 and to pay the surplus, if any, to the company.

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due up to the date of realization or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated:

Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of

recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice."

27. When a specific procedure to adjudicate a claim/counter claim/set off, is envisaged in Rule 19 of the RDBI Act, 1993, the DRAT, Chennai, has committed a patent error in directing dismissal. Rules of natural justice are foundational and fundamental concepts of law. Principles of natural justice are part of the procedure, in the decision making process, involving the rights of parties. Let us now consider a few decisions dealing with the principles of natural justice as hereunder:

i) In ***State of Orissa v. Binapani Dei [1967] 2 SCR 625***, the Hon'ble Supreme Court observed as hereunder:

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences... must be made consistently with the rules of natural justice."

ii) In ***Union of India v. P.K.Roy*** reported in **[1968] 2 SCR 186** the Hon'ble Supreme Court held thus:

"The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

iii) In ***Sarpanch Lonand Gram Panchayat v. Ramgiri*** reported in **AIR 1968 SC 222**, the Hon'ble Supreme Court, at paragraph 5, held as follows:

"5.....But the High Court is vested with the power of judicial superintendence over the tribunal under Article 227 of the Constitution. This power is not, greater than the power under Article 226 and is limited to seeing that the tribunal functions within the limits of its authority, see Nagendra Nath Bora and another v. The Commissioner of Hills Division and Appeals, Assam, and others. The High Court will not review the discretion of the Authority judicially exercised, but it- may interfere if the exercise of the discretion is capricious or perverse or ultra vires."

iv) In ***Kraipak v. Union of India & Ors.*** reported in **[1970] 1 SCR 457**, the Hon'ble Apex Court held thus:

".....Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially, there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice, one fails to see why those rules should be made inapplicable to administrative enquiries."

It was further held in the said judgment as follows:

"What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

Prof. Wade in his **Administrative Law** has summarised the principle of natural justice as follows:

"It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: not as to their scope and extent. Everything depends on the subject matter, the application for principles of natural justice, resting as it does upon statutory implication,

must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

v) In ***Uma Nath Pandey & Ors. v. State of U.P. & Anr.*** reported in **2009 AIR SCW 3200**, Hon'ble Dr. Arijit Pasayat, has traced the history of the principles of natural justice, as hereunder:

6. *Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.*

7. *The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn*

purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as *audi alteram partem* rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the

celebrated case of *Cooper v. Wandsworth Board of Works* [(1863) 143 ER 414], the principle was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".

9. Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

10. Principles of *natural justice* are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

11. What is meant by the term '*principles of natural justice*' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *Ray v. Local Government Board* (1914) 1 KB 160 at p.199:83 LJKB 86) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Sanckman* (1943 AC 627: (1948) 2 All ER 337), Lord Wright observed that it was not desirable to attempt 'to force it into any *procustean bed*' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity' to every party of being heard.

12. Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice (1911 AC 179:80 LJKB

796), where Lord Loreburn, L.C. observed as follows:

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial....The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

13. Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same

effect are the observations of Earl of Selbourne, LO in *Spackman v. Plumstead District Board of Works* (1985 (10) AC 229:54 LJM 81), where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice".

14. Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the

nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

16. *Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855(2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In James Dunbar Smith v. Her Majesty the Queen (1877-78(3) App.Case 614, 623 JC) Sir Robert P. Collier, speaking for the judicial committee of Privy council, used the phrase 'the requirements of substantial justice', while in Arthur John Specman v. Plumstead District Board of Works (1884-85(10) App.Case 229, 240), Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice'. In Vionet v. Barrett (1885(55) LJRD 39, 41), Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding Hookings v. Smethwick Local Board of Health (1890(24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra)*

chose to define natural justice as 'fundamental justice'. In *Ridge v. Baldwin* (1963(1) WB 569, 578), Harman LJ, in the Court of Appeal countered natural justice with 'fair-play in action' a phrase favoured by Bhagawati, J. in *Maneka Gandhi v. Union of India* (1978 (2) SCR 621). In *re R.N. (An Infant)* (1967(2) B617, 530), Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'. In *fairmount Investments Ltd., v. Secretary to State for Environment* (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. In *Regina v. Secretary of State for Home Affairs Ex Parte Hosenball* (1977 (1) WLR 766) preferred the homely phrase 'common fairness'.

17. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the

same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

28. Let us consider few cases on the scope of power of superintendence of the High Court under Article 227 of the Constitution of India.

(i) In **Jodhey v. State** reported in **AIR 1952 All. 788**, after hearing the history of Article 227 of the Constitution of India, the Allahabad High Court hold thus,

"9. A comparison of the above provision of law with analogous provisions of law prior to the Constitution of India brings into prominence some important features of the new state of law established by the constitution. The most important feature of Article 227, Constitution of India, is that it has omitted any restriction on the power of the High Court to interfere in judicial matters, which was imposed by Sub-section (2) of Section 224, Government of India Act, 1935. In this way, it has enlarged the power of the High Court and restored the power, which was given to it under the Government of India Act, 1915. It is also significant that the words restricting the power of the superintendence of the High Courts for the time being subject to its appellate jurisdiction, a restriction which was contained not only in the Government of India Act 1935 but also in the Government of India Act, 1915, as well as in the High Court Act, 1861, are also omitted from Article 227 of the Constitution of India. The effect of this omission to my mind is to make it clear beyond doubt that all Courts functioning within the territory in relation to which the High Court exercises its jurisdiction were subject to supervisory jurisdiction of High Court. Thus even special Courts set up under Acts of legislature for specific purposes would also be subject to its jurisdiction. It seems to me that in this regard Article 227 has vested the High Court with a greater power than that given to it even under the Government of India Act, 1915, or the High Court Act, 1861.

It is also relevant in this connection to note that the Constitution of India has given this supervisory power to the High Court not only over all Courts but also over all tribunals throughout the territories in relation to which it

exercises its jurisdiction. The word 'tribunals' did not find a place either in the Government of India Act of 1935 or in the Government of India Act 1915 or in the High Court Act, 1861. The purpose of the addition of the word "tribunals" to Article 227, to my mind was to emphasise the fact that not only bodies which are Courts within the strict definition of that term would be subject to the supervisory jurisdiction of the High Court but all bodies that perform the functions of Courts and are akin to them are drawn within the purview of its supervision and cannot claim exemption from it merely by virtue of the fact that they do not come within the strict category of civil, revenue, or criminal Courts as known under the ordinary law of the land. Certain other minor changes in this Article are also noteworthy. A contrast of the marginal note appended to Article 227 of the Constitution of India with the marginal notes of Section 224, Government of the India Act, 1935, Section 107, Government of India Act 1915, and Section 15, High Courts Act, 1861, is instructive. The marginal note of Article 227 of the Constitution of India is "Power of superintendence over all Courts by the High Courts". This may be contrasted with the marginal note of Section 224, Government of India Act, 1935, which was "Administrative functions of the High Court" and the marginal note of Section 107, Government of India Act, 1915, which was "Powers of High Court with respect to subordinate Courts". Similarly, the marginal note of Section 15, High Courts Act, 1861, was "High Courts to superintend and to frame rules of practice for subordinate Courts", The alteration in this marginal note also emphasises the fact that the powers of the High Court under the Constitution extend not merely to

administrative functions but embraces all functions, whether administrative or judicial. It also indicates that this power under the Constitution extends to all Courts and is not confined to "subordinate Courts" as indicated by the marginal note of Section 107, Government of India Act, 1915. A comparison of the draft Constitution with the enacted Constitution shows that the marginal notes were inserted under the authority of and with the knowledge of the Constituent Assembly. Under the above circumstances the view regarding the in admissibility of marginal notes expressed by the Privy Council in *Balraj Kunwar v. Jagatpal Singh*, 31 Ind. App. 132 (P.C.) should be taken to have undergone change both in India as well as in England vide *Iswari Prasad v. N.B.Sen*, 55 Cal. W. N. 719 (F.B.). Marginal notes inserted in those circumstances have been held to be admissible by a Full Bench decision of the Allahabad-High Court in *Ram Saran v. Bhagwat Prasad*, A.I.R. 1929 ALL. 53 (F.B.) by a Full Bench decision of the late Chief Court of Avadh in *Emperor v. Mumtaz Husain*, A. I. E. 1935 Oudh 337 (F.B.) and by a Full Bench decision of the Bombay; High Court in *Emperor v. Ismail Sayad Saheb Mujawar*, A. I. E. 1933 Bom. 417 (P.B.). In a recent decision of the Bombay High Court reported in the State of Bombay v. Heman Santlal, A.I.R. 1952 Bom. 16, it was held by Chagla C.J. that the marginal notes of the Constitution may be referred to for the purpose of understanding the drift of the Articles. In *Suresh Chandra v. Bank of Calcutta Ltd.*, 54 Cal. W.N 832 at p. 836 the marginal notes of an Indian Act were compared with the corresponding marginal notes of the English Act to elucidate the meaning of the section. The contrary view

expressed in the Commr. of Income-Tax Excess Profit Tax v. Parasram Jethanand, A.I.R, 1950 Mad. 631 and Sutlej Cotton Mills Ltd v Commr, of Income-Tax, West Bengal, A.I.R. 1950 Cal. 551 should not therefore, be accepted without qualification. The opinion which I, however, have formed is independently of the marginal notes and is based on the Article itself viewed in the light of its historical background.

10. To emphasise and to clarify the plenary nature of power of superintendence vested in the High Court the provision of law relating to it has been split up into four clauses. The first clause enunciates the general power of supervision given to High Court over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It is couched in a language which would vest the High Court with a power that is not fettered with any restriction and must embrace all aspects of the functions exercised by every Court and tribunal. On a proper interpretation of this clause it is difficult to my mind to hold that the powers of superintendence are confined only to administrative matters. There are no limits, fetters or restrictions placed on this power of superintendence in this Clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein. To fulfil this function it seems to me that the power of superintendence of the High Court over judicial matters is as necessary as over administrative matters. As a matter of fact judicial function of a Court is

not less important than its administrative function. In fact it is more necessary to rectify lapses in judicial matters than defects in administrative matters. A judicial error might affect the rights, liberty and freedom of the subject whereas an administrative error might not do so. To my mind superintendence over judicial functions is a necessary complement of superintendence over administrative functions and it is sometimes very difficult to say where the one ends and the other begins. If the High Court is to perform this function efficiently and effectively, it must act on both sides, otherwise the very power of superintendence will be crippled and what has been achieved on the administrative side might be lost on the judicial side.

11. Clause 2 of Article 227 seems to emphasise the administrative aspect over which the High Court can exercise power of superintendence and enumerates the various instances of superintendence in the administrative field. The use of words "without prejudice to the generality of the foregoing provision" is not without significance. It seems to imply that the power of superintendence over administrative functions given to the High Court does not in any way derogate from the general power of superintendence given by Clause (1).

12. Clause (a) of Article 227 again enumerates certain specific matters which would fall on the administrative side of the work of a Court.

13. Clause (4) shows that the only Courts exempted from the superintendence of the High Court are Courts or tribunals constituted by or under any law relating to the Armed Force's. A mention of the solitary exemption also

emphasises the clear field of superintendence which is left within the jurisdiction of the High Court after exempting the prohibited area covered by the Military Courts or tribunals mentioned therein.

14. A reading of the entire Article 227 of the Constitution of India in the light of the antecedent law on the subject leads one to the irresistible conclusion that the purpose of the constitution makers was to make the High Court responsible for the entire administration of justice and to vest in the High Court an unlimited reserve of judicial power which could be brought into play at any time that the High Court considered it necessary to draw upon the same. Springing as it does from the Constitution, which is the parent of all Acts and Statutes in India, the fact that the judgment or order of a Court or tribunal has been made final by an Act or the fact that the body performing judicial functions is special tribunal constituted under a Statute cannot be set up as a bar to the exercise of this power by the High Court. The prohibited area is to be found within the four corners of the constitution itself and nowhere else.

15. The fact that these unlimited powers are vested in the High Court should, however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Courts themselves. It seems to me that these powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law. Apart from matters relating to jurisdiction, the High

Court may be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice which calls for remedy. Under this power, the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party."

ii) In **Trimbak v. Ram Chandra** reported in **AIR 1977 SC 1222**, the Hon'ble Supreme Court held as follows:

" It is a well-settled rule of practice of this Court not to interfere with the exercise of discretionary power under Articles 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where the order passed results in manifest injustice, that a court can justifiably intervene under Article 227 of the Constitution."

iii) The Hon'ble Apex Court in **Surya Dev Rai v. Ram Chander**

Rai and Others reported in **(2003) 6 SCC 675** held, a revision could

be maintained under certain circumstances, invoking Article 227 of the Constitution of India, and therefore, it is not possible to hold that no revision is maintainable under any provisions of law. In this view, when it is shown that the trial court has failed to exercise its jurisdiction, properly applying the provisions of law, or when it is so that the trial court has wrongly exercised its jurisdiction, offending the statute, then, invoking the supervisory jurisdiction of this Court, can be interfered by this Court. The Hon'ble Supreme Court, at paragraph Nos.6 to 39, held as follows:

6. *According to Corpus Juris Secundum (Vol.14, page 121) certiorari is a writ issued from a superior court to an inferior court or tribunal commanding the latter to send up the record of a particular case.*

7. *H.W.R. Wade & C.F. Forsyth define certiorari in these words :- "Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed – that is to say, it is declared completely invalid, so that no one need respect it.*

The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds. This is the concern of the Crown, for the sake of orderly administration of justice, but it is a private complaint which sets the Crown in motion." (Administrative Law, Eighth Edition, page 591).

8. *The learned authors go on to add that problem arose on exercising control over justices of the peace, both in their judicial and their administrative functions as also the problem of controlling the special statutory body which was addressed to by the Court of King's Bench. "The most useful instruments which the Court found ready to hand were the prerogative writs. But not unnaturally the control exercised was strictly legal, and no longer political. Certiorari would issue to call up the records of justices of the peace and commissioners for examination in the King's Bench and for quashing if any legal defect was found. At first there was much quashing for defects of form on the record, i.e. for error on the face. Later, as the doctrine of ultra vires developed, that became the dominant principle of control" (page 592).*

9. *The nature and scope of the writ of certiorari and when can it issue was beautifully set out in a concise passage, quoted hereafter, by Lord Chancellor Viscount Simon in Ryots of Garabandho and other villages Vs. Zamindar of Parlakimedi and Anr. – AIR 1943 PC 164. "The ancient writ of certiorari in England is an original writ which may issue out of a superior Court requiring that the record of the proceedings in some cause or matter pending before an inferior Court should be transmitted into the superior Court to be there dealt with. The writ is so named because, in its original Latin form, it required that the King should "be certified" of the proceedings to be investigated, and the object is to secure by the exercise of the authority of a superior Court, that the jurisdiction of the inferior tribunal should be properly exercised. This writ does not issue to correct*

purely executive acts, but, on the other hand, its application is not narrowly limited to inferior "Courts" in the strictest sense. Broadly speaking, it may be said that if the act done by the inferior body is a judicial act, as distinguished from being a ministerial act, certiorari will lie. The remedy, in point of principle, is derived from the superintending authority which the Sovereign's Superior Courts, and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits, in British India."

10. Article 226 of the Constitution of India preserves to the High Court power to issue writ of certiorari amongst others. The principles on which the writ of certiorari is issued are well-settled. It would suffice for our purpose to quote from the 7-Judge Bench decision of this Court in *Hari Vishnu Kamath Vs. Ahmad Ishaque and Ors.* – (1955) 1 SCR 1104. The four propositions laid down therein were summarized by the Constitution Bench in *The Custodian of Evacuee Property Bangalore Vs. Khan Saheb Abdul Shukoor etc.* – (1961) 3 SCR 855 as under :-

".....the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in Hari Vishnu Kamath Vs. Ahmad Ishaque 1955-I S 1104 : ((s) AIR

1955 SC 233) and the following four propositions were laid down :-

"(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision." सत्यमेव जयते

11. In the initial years the Supreme Court was not inclined to depart from the traditional role of certiorari jurisdiction and consistent with the historical background felt itself bound by such procedural technicalities as were well-known to the English judges. In later years the Supreme Court has relaxed the procedural and technical rigours, yet the broad and fundamental principles governing the exercise of jurisdiction have not been given a go-by.

12. *In the exercise of certiorari jurisdiction the High Court proceeds on an assumption that a Court which has jurisdiction over a subject- matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an Appellate Court and step into re-appreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.*

13. *In Nagendra Nath Bora & Anr. Vs. Commissioner of Hills Division and Appeals, Assam & Ors., (1958) SCR 1240, the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari where so set out by the Constitution Bench : –*

"The Common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extra-ordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a court sitting as a court of appeal only, could have examined and, if necessary, corrected and the appellate authority

under a statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the appellate authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is not case for the exercise of the jurisdiction under Article 226."

14. The Constitution Bench in *T.C. Basappa Vs. T. Nagappa & Anr.*, (1955) 1 SCR 250, held that certiorari may be and is generally granted when a court has acted (i) without jurisdiction, or (ii) in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceedings or from the absence of some preliminary proceedings or the court itself may not have been legally constituted or suffering from certain disability by reason of extraneous circumstances. Certiorari may also issue if the court or tribunal though competent has acted in flagrant disregard of the rules or procedure or in violation of the principles of natural justice where no particular procedure is prescribed. An error in the decision or determination itself may also be amenable to a writ of certiorari subject to the following factors being available if the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law but a mere wrong decision is not amenable to a writ of certiorari.

15. Any authority or body of persons constituted by law or having legal authority to adjudicate upon questions

affecting the rights of a subject and enjoined with a duty to act judicially or quasi-judicially is amenable to the certiorari jurisdiction of the High Court. The proceedings of judicial courts subordinate to High Court can be subjected to certiorari.

16. While dealing with the question whether the orders and the proceedings of subordinate Court are amenable to certiorari writ jurisdiction of the High Court, we would be failing in our duty if we do not make a reference to a larger Bench and a Constitution Bench decisions of this Court and clear a confusion lest it should arise at some point of time. *Naresh Shridhar Mirajkar & Ors. Vs. State of Maharashtra and Anr. – (1966) 3 SCR 744*, is a nine-Judges Bench decision of this Court. A learned judge of Bombay High Court sitting on the Original Side passed an oral order restraining the Press from publishing certain court proceedings. This order was sought to be impugned by filing a writ petition under Article 226 of the Constitution before a Division Bench of the High Court which dismissed the writ petition on the ground that the impugned order was a judicial order of the High Court and hence not amenable to a writ under Article 226. The petitioner then moved this Court under Article 32 of the Constitution for enforcement of his fundamental rights under Article 19(1)(a) and (g) of the Constitution. During the course of majority judgment Chief Justice Gajendragadkar quoted the following passage from Halsbury Laws Of England (Vol.11 pages 129, 130) from the foot- note :

"(...in the case of judgments of inferior courts of civil jurisdiction) it has been suggested that certiorari might

be granted to quash them for want of jurisdiction [Kemp v. Balne (1844), 1 Dow. & L. 885, at p.887], inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior Court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground".

His Lordship then said :

"The ultimate proposition is set out in terms:

"Certiorari does not lie to quash the judgments of inferior Courts of civil jurisdiction". These observations would indicate that in England the judicial orders passed by civil Courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari."*

17. A perusal of the judgment shows that the above passage has been quoted "incidentally" and that too for the purpose of finding authority for the proposition that a judge sitting on the Original Side of the High Court cannot be called a court 'inferior or subordinate to High Court' so as to make his orders amenable to writ jurisdiction of the High Court. Secondly, the abovesaid passage has been quoted but nowhere the Court has laid down as law by way its own holding that a writ of certiorari by High Court cannot be directed to Court subordinate to it. And lastly, the passage from Halsbury quoted in Naresh Shridhar Mirajkar's case (supra) is from third edition of Halsbury Laws of England (Simond's Edition, 1955). The law has undergone a change in England itself and this changed legal position has been noted in a Constitution Bench decision of this Court in Rupa Ashok Hurra Vs. Ashok

Hurra and Anr. – (2002) 4 SCC 388. Justice SSM Quadri speaking for the Constitution Bench has quoted the following passage from Halsbury's Laws of England, 4th Edn.(Reissue) Vol.1 (1) :

"103. Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the exclusive jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court in the King's Bench for review or to remove indictments and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs."

"109. Certiorari lies to bring decisions of an inferior court, tribunal, public authority or any other body of persons before the High Court for review so that the court may determine whether they should be quashed, or to quash such decisions. The order of prohibition is an order issuing out of the High Court and directed to an inferior court or tribunal or public authority which forbids that court or tribunal or authority to act in excess of its jurisdiction or contrary to law. Both certiorari and prohibition are employed for the control of inferior courts, tribunals and public authorities."

18. Naresh Shridhar Mirajkar's case was cited before the Constitution Bench in Rupa Ashok Hurra's case and considered. It has been clearly held : (i) that it is a well-settled principle that the technicalities associated with the prerogative writs in English law have no role to play under our constitutional scheme; (ii) that a writ of certiorari to call for records and examine the same for passing appropriate orders, is issued by superior court to

an inferior court which certifies its records for examination; and (iii) that a High Court cannot issue a writ to another High Court, nor can one Bench of a High Court issue a writ to a different Bench of the High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. The High Courts are not constituted as inferior courts in our constitutional scheme.

19. Thus, there is no manner of doubt that the orders and proceedings of a judicial court subordinate to High Court are amenable to writ jurisdiction of High Court under Article 226 of the Constitution.

20. Authority in abundance is available for the proposition that an error apparent on face of record can be corrected by certiorari. The broad working rule for determining what is a patent error or an error apparent on the face of the record was well set out in Satyanarayan Laxminarayan Hegde and Ors. Vs. Mallikarjun Bhavanappa Tirumale, (1960) 1 SCR 890. It was held that the alleged error should be self-evident. An error which needs to be established by lengthy and complicated arguments or an error in a long-drawn process of reasoning on points where there may conceivably be two opinions cannot be called a patent error. In a writ of certiorari the High Court may quash the proceedings of the tribunal, authority or court but may not substitute its own findings or directions in lieu of one given in the proceedings forming the subject-matter of certiorari.

21. Certiorari jurisdiction though available is not to be exercised as a matter of course. The High Court would

be justified in refusing the writ of certiorari if no failure of justice has been occasioned. In exercising the certiorari jurisdiction the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine whether on the face of the record the inferior court has committed any of the preceding errors occasioning failure of justice.

22. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by sub-Articles (2) and (3) of Article 227 with which we are not concerned hereat. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

23. The history of supervisory jurisdiction exercised by the High Court, and how the jurisdiction has culminated into its present shape under Article 227 of the Constitution, was traced in *Waryam Singh & Anr. Vs. Amarnath & Anr.* (1954) SCR 565. The jurisdiction can be traced back to Section 15 of High Courts Act 1861 which gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court. Section 107 of the Government of India Act 1915 and then Section 224 of the Government of India Act 1935, were similarly worded and reproduced the predecessor provision. However, sub-section (2) was added in Section 224 which confined the jurisdiction of the High Court to such judgments of the inferior courts which were not otherwise subject to appeal or revision. That restriction has not been carried forward in Article 227 of the Constitution. In that sense Article 227 of the Constitution has width and vigour unprecedented.

Difference between a writ of certiorari under Article 226 and supervisory jurisdiction under Article 227.

24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram and Ors. Vs. Smt. Radhikabai and Anr.*, (1986) Supp. SCC 401. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to

tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

25. Upon a review of decided cases and a survey of the occasions wherein the High Courts have exercised jurisdiction to command a writ of certiorari or to exercise supervisory jurisdiction under Article 227 in the given facts and circumstances in a variety of cases, it seems that the distinction between the two jurisdictions stands almost obliterated in practice. Probably, this is the reason why it has become customary with the lawyers labeling their petitions as one common under Articles 226 and 227 of the Constitution, though such practice has been deprecated in some judicial pronouncement. Without entering into niceties and technicality of the subject, we venture to state the broad general difference between the two jurisdictions. Firstly, the writ of certiorari is an exercise of its original jurisdiction by the High Court; exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate

revisional or corrective jurisdiction. Secondly, in a writ of certiorari, the record of the proceedings having been certified and sent up by the inferior court or tribunal to the High Court, the High Court if inclined to exercise its jurisdiction, may simply annul or quash the proceedings and then do no more. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made. Lastly, the jurisdiction under Article 226 of the Constitution is capable of being exercised on a prayer made by or on behalf of the party aggrieved; the supervisory jurisdiction is capable of being exercised suo motu as well.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the Legislature in

exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise power of superintendence during the pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

27. In *Chandrasekhar Singh & Ors. Vs. Siva Ram Singh & Ors.*, (1979) 3 SCC 118, the scope of jurisdiction under Article 227 of the Constitution came up for the consideration of this Court in the context of Sections 435 and 439 of the Criminal Procedure Code which prohibits a second revision to the High Court against decision in first revision rendered by the Sessions Judge. On a review of earlier decisions, the three-Judges Bench summed up the position of law as under :-

(i) that the powers conferred on the High Court under Article 227 of the Constitution cannot, in any way, be curtailed by the provisions of the Code of Criminal procedure;

(ii) the scope of interference by the High Court under Article 227 is restricted. The power of superintendence conferred by Article 227 is to be exercised sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors;

(iii) that the power of judicial interference under Article 227 of the Constitution is not greater than the power under Article 226 of the Constitution;

(iv) that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal; the High Court cannot, in exercise of its jurisdiction under Article 227, convert itself into a Court of Appeal.

28. Later, a two-judge Bench of this Court in *Baby Vs. Travancore Devaswom Board & Ors.*, (1998) 8 SCC 310, clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it.

Does the amendment in Section 115 of C.P.C have any impact on jurisdiction under Articles 226 and 227?

29. The Constitution Bench in *L. Chandra Kumar Vs. Union of India & Ors.*, (1997) 3 SCC 261, dealt with the nature of power of judicial review conferred by Article

226 of the Constitution and the power of superintendence conferred by Article 227. It was held that the jurisdiction conferred on the Supreme Court under Article 32 of the Constitution and on the High Courts under Articles 226 and 227 of the Constitution is part of the basic structure of the Constitution, forming its integral and essential feature, which cannot be tampered with much less taken away even by constitutional amendment, not to speak of a parliamentary legislation. A recent Division Bench decision by Delhi High Court (Dalveer Bhandari and H.R. Malhotra, JJ) in Criminal Writ Petition NO.s.758, 917 and 1295 of 2002 – Govind Vs. State (Govt. of NCT of Delhi) decided on April 7, 2003 (reported as [2003] 6 ILD 468 makes an indepth survey of decided cases including almost all the leading decisions by this Court and holds – "The power of the High Court under Article 226 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution." The essence of constitutional and legal principles, relevant to the issue at hand, has been correctly summed up by the Division Bench of the High Court and we record our approval of the same.

30. It is interesting to recall two landmark decisions delivered by High Courts and adorning the judicial archives. In *Balkrishna Hari Phansalkar Vs. Emperor*, AIR 1933 Bombay 1, the question arose before a Special Bench: whether the power of superintendence conferred

on the High Court by Section 107 of Government of India Act 1915 can be controlled by the Governor-General exercising his power to legislate. The occasion arose because of the resistance offered by the State Government to the High Court exercising its power of superintendence over the Courts of Magistrates established under Emergency Powers Ordinance, 1932. Chief Justice Beaumont held that even if power of revision is taken away, the power of superintendence over the courts constituted by the ordinance was still available. The Governor-General cannot control the powers conferred on the High Court by an Act of Imperial Parliament. However, speaking of the care and caution to be observed while exercising the power of superintendence though possessed by the High Court, the learned Chief Justice held that the power of superintendence is not the same thing as the hearing of an appeal. An illegal conviction may be set aside under power of superintendence but - "we must exercise our discretion on judicial grounds, and only interfere if considerations of justice require us to do so."

31. In *Manmatha Nath Biswas Vs. Emperor*, (1932-33) 37 C.W.N. 201, a conviction based on no legal reason and unsustainable in law came up for the scrutiny of the High Court under the power of superintendence in spite of right of appeal having been allowed to lapse. Speaking of the nature of power of superintendence, the Division Bench, speaking through Chief Justice Rankin, held that the power of superintendence vesting in the High Court under Section 107 of the Government of India Act, 1915, is not a limitless power available to be exercised for

removing hardship of particular decisions. The power of superintendence is a power of known and well-recognised character and should be exercised on those judicial principles which give it its character. The mere misconception on a point of law or a wrong decision on facts or a failure to mention by the Courts in its judgment every element of the offence, would not allow the order of the Magistrate being interfered with in exercise of the power of superintendence but the High Court can and should see that no man is convicted without a legal reason. A defect of jurisdiction or fraud on the part of the prosecutor or error on the "face of the proceedings" as understood in Indian practice, provides a ground for the exercise of the power of superintendence. The line between the two classes of case must be, however, kept clear and straight. In general words, the High Court's power of superintendence is a power to keep subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

32. The principles deducible, well-settled as they are, have been well summed up and stated by a two-judges Bench of this Court recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors., JT 2003 (4) SC 605, para 28. This Court held :

- (i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the state Legislature;*
- (ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order;*

(iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

33. In *Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s. Swaraj Developers & Ors.*, (2003) 4 Scale 241, another two-Judges bench of this Court dealt with Section 115 of the C.P.C. The Court at the end of its judgment noted the submission of the learned counsel for a party that even if the revisional applications are held to be not maintainable, there should not be a bar on a challenge being made under Article 227 of the Constitution for which an opportunity was prayed to be allowed. The Court observed – "If any remedy is available to a party, no liberty is necessary to be granted for availing the same."

34. We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away – and could not have taken away – the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to rules of self discipline and practice which are well settled.

35. We have carefully perused the Full Bench decision of the Allahabad High Court in *Ganga Saran's*

case relied on by the learned counsel for respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide para 11, the Full Bench has itself held that where the order of the Civil Court suffers from patent error of law and further causes manifest injustice to the party aggrieved then the same can be subjected to writ of certiorari. The Full Bench added that every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved the jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench:-

"where an aggrieved party approaches the High Court under Art. 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction, the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Art.226 of the Constitution would not be maintainable."

36. It seems that the High Court in its decision impugned herein formed an impression from the above-quoted passage that a prayer for issuance of injunction having been refused by trial court as well as the appellate court, both being subordinate to High Court and the dispute being between two private parties, issuance of

injunction by High Court amounts to issuance of a mandamus against a private party which is not permissible in law.

37. The above quoted sentence from Ganga Saran's case cannot be read torn out of the context. All that the Full Bench has said is that while exercising certiorari jurisdiction over a decision of the court below refusing to issue an order of injunction, the High Court would not, while issuing a writ of certiorari, also issue a mandamus against a private party. Article 227 of the Constitution has not been referred to by the Full Bench. Earlier in this judgment we have already pointed out the distinction between Article 226 and Article 227 of the Constitution and we need not reiterate the same. In this context, we may quote the Constitution Bench decision in *T.C. Basappa Vs. T. Nagappa and Anr.*, (1955) 1 SCR 250 and *Province of Bombay Vs. Khushaldas S. Advani (dead) by Lrs.*, 1950 SCR 621, as also a three-Judge Bench decision in *Dwarka Nath Vs. Income-tax Officer, Special Circle, D Ward, Kanpur and Anr.*, (1965) 3 SCR 536, which have held in no uncertain terms, as the law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially. We are therefore of the opinion that the writ of certiorari is directed against the act, order of proceedings of the subordinate Court, it can issue even if the lis is between two private parties.

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell,

even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has

occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early

disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226

or 227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. Not less than often the High Court would be faced with dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where 'a stitch in time would save nine'. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

iv) In Following **Surya Devi's** case, cited supra, in **Jeya v. Sundaram Iyyar** reported in **2005 (4) MLJ 278**, this Court held that,

"when it is shown that the trial Court has failed to exercise its jurisdiction, properly applying the provisions of law, or when it is so that the trial Court has wrongly exercised its jurisdiction, offending the statute, then, invoking the supervisory jurisdiction of this Court, there can be interference by this Court."

v) In **Managing Director, Makkal Tholai Thodarpu Kuzhuman Ltd., v. V.Muthulakshmi** reported in **2007 (6) MLJ 1152**, at Paragraph 28, this Court held that,

"28. Therefore, the consistent judicial pronouncement by the Supreme Court as well as this Court makes it very clear that in case where the lower Court passes an order which cannot be accepted by any prudent sense, it is always open to the High Court under Article 227 of the Constitution of India to correct the same by exercising the right of superintendence."

vi) In **B.K.Muniraju v. State of Karnataka and others** reported in **(2008) 4 SCC 451**, the Hon'ble Supreme Court at paragraphs 22 to 25, held as follows:

22. *It is settled law that a writ of Certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave mis-carriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of Certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not*

supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ.

23. *It is useful to refer the decision of this Court in Surya Dev Rai vs. Ram Chander Rai and Others, (2003) 6 SCC 675 wherein, in para 38, held as under:*

"38.(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice."

24. *It is clear that whether it is a writ of Certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. It is also clear that the High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing*

inferences or correct errors of mere formal or technical character.

25. As observed in *Surya Dev Rai vs. Ram Chander Rai (supra)*, the exercise of jurisdiction under article 226 or 227 of the Constitution cannot be tied down in a straight jacket formula or rigid rules. To put it clear though the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

vii) In **Udhayabhanu v. Ranganayaki** reported in **AIR 2009 Mad. 91**, at Paragraph 21, this Court held as follows:

"12. The Court is of the opinion that it can interfere with an order passed by a Court, which has patently usurped the jurisdiction exercisable by any other court and there is no impediment to interfere with the same, if the courts, subordinate to the High Court are allowed to transgress their powers by touching the subjects, which are not ear marked for them, the justice will not be rendered to the needy persons. Under supervisory jurisdiction, the High Court has got every power to correct the orders and decisions of the courts below, which are passed without jurisdiction, particularly when they are not specifically conferred with power to try a particular subject."

viii) In **M/s.World Wide Brands Inv. v. Smt.Dayavanthi**

Jhamnadas Hinduja and another reported in **2009-1-L.W.658**, a

Hon'ble Division Bench of the Madras High Court , at paragraph Nos.11 to 22, considered a catena of judgments and held as follows:

11. In **Waryam Sing v. Amarnath, AIR 1954 SC 215**, the Apex Court has held that the power of superintendence conferred by Article 227 of the Constitution is to be exercised more sparingly and only in appropriate case in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

12. The above said law is again reiterated by the Apex Court in *Singaram Singh v. Election Tribunal*, AIR 1955 SC 425 and *Nagendra Nath Bora v. Commissioner of Hills Division & Appeals*, AIR 1958 SC 398.

13. In *T.Prem Sagar v. M/s.Standard Vacuum Oil Company*, AIR 1965 SC 111, it has been held that in writ proceedings if an error of law apparent on the face of the records is disclosed and the writ is issued, the usual course to adopt is to correct the error and send the case back to the special Tribunal for its decision in accordance with law. It would be inappropriate for the High Court exercising its writ jurisdiction to consider the evidence for itself and reach its own conclusions in matters which have been left by the legislature to the decisions of specially constituted Tribunals.

14. In *Joint Registrar of Co-Operative Societies, Madras & others v. P.S.Rajagopal Naidu, Govindarajulu and others*, AIR 1970 SC 992, the Apex Court has held that the High Courts should not act as a Court of appeal and re-appraise and re-examine the relevant facts and circumstances which led to the making of order.

15. In *Muni Lal and others v. Prescribed Authority and others*, AIR 1978 SC 29, it has been held that the High Court cannot re-appreciate the evidence and come to its own conclusion different from that of the prescribed Authority.

16. In *Ganpat Ladha v. Sashikant Vishnu Shinde*, AIR 1978 SC 955, the Apex Court has held that the High Courts cannot justify the exercise of its discretionary powers under Article 227 of the Constitution as to the finding of fact; unless such finding of fact is clearly perverse and patently unreasonable.

17. In *Chandavarkar Sita Ratna Rao v. Ashalata S.Guram*, (1986) 4 SCC 447, the Apex Court at page 460, para (4) has held thus:-

" It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any misdirection in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline to exercise its jurisdiction under Articles 226 and 277 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings are perverse and not based on any material evidence or it resulted in manifest injustice. Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere,

it is manifest that the High Court has gone into questions which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution. On the first point, therefore, the High Court was in error."

18. In *Ouseph Mathai and others v. M. Abdul Khadir*, (2002) 1 SCC 319, the Apex Court in para (4) has held thus:-

"It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt, Article 227 confers a right of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said article as a matter of right. In fact power under this article casts a duty upon the High Court to keep the inferior Courts and Tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such Courts and Tribunals in accordance with law conferring powers within the ambit of the enactments creating such Courts and Tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this article unless the wrong is

referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party"

19. In *State v. Navjot Sandhu*, (2003) 6 SCC 641, the Apex Court, at page 656, para (28) has held as under:-

"Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeking that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate court and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory

law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise".

20. In *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, the Apex Court has held that exercise of power under Article 226 is available only to correct the error committed by the Court or the authority and the error should be self-evidence. The Apex Court had also cautioned that such an error which needs to be established by lengthy and complicated arguments or by indulging in a long-drawn process of reasoning, cannot possibly be an error available for correction by writ of certiorari.

21. In *Ranjeet Singh v. Ravi Prakash*, (2004) 3 Supreme Court Cases 682 the Apex Court has held that unless, the High Court finds patent error in the order of the tribunal or appellate board, it would not be proper to interfere in such order in exercise of jurisdiction under Article 227 of the Constitution.

22. The Superintendence power of the High Court under Article 227 of the Constitution of India, over all Courts and tribunals is basically to keep the subordinate courts/tribunals/appellate authorities constituted under statutes within their bounds and not for correcting mere errors. The exercise of power is limited to want of jurisdiction, errors of law, perverse findings, gross violation of principles of natural justice and like the one. It may be exercised, if it is shown that grave injustice has been done to the person, who has invoked the jurisdiction with such grievance, the Court does not act as an appellate authority to reappraise the evidence and

come to a different conclusion. Even if two views are possible, in exercise of power, the Court would not be justified in substituting its own reason for the reasons of the subordinate courts/tribunals or appellate tribunals/boards. Of course, the power of this Court is not taken away, where the statutory appellate tribunal/board brushes aside the evidence on conjunctures and without giving cogent reasons, which would result in error apparent on the face of the records. Unless, the errors questioned are apparently error, perverse and the findings are not supported by any materials, the exercise of power under Article 227 of the Constitution to interfere with in such orders may not be available.

ix) In **Ramesh Chandra Sankla v. Vikram Cement** reported in **AIR 2009 SC 712**, at paragraph 81, held as follows:

" 81. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised *ex debito justitiae*, i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must 'advance the ends of justice and uproot injustice'."

29. Statement of accounts, would reveal, the loan availed, amounts paid, and amount transferred by any other institution, in the case on insurance claim amount. Even taking it for granted that such statement is not filed, still it is always open to both parties, to adduce evidence, in Debts Recovery Tribunal, Bangalore, in support of their rival contentions. Public money to the tune of Rs.21,76,42,758.42 is involved. Action of DRAT, Chennai in directing DRT, Bangalore, to dismiss original application, for non-submission of statement of accounts to the Tribunal, cannot be approved. When huge public money is involved, DRAT, Chennai, ought to have directed, DRT, Bangalore, to proceed with the matter, on merits.

30. Going through the order impugned, it could be deduced that for the alleged non-accounting of the insurance amount, DRAT, Chennai, condemned the bank, ordered cost, in case of failure of submission of statement of accounts within three days and also gone to the extent of directing dismissal of O.A. No.326 of 2002. DRAT, Chennai and thus, committed a patent and grave error, which cannot be remedied and rectified, by review, as the order made in M.A. No.131/2013 dated 11.03.2015, has already been given effect to, by DRT, Bangalore. When violation of principles of natural justice is per se apparent on the face of record, High Court, while exercising jurisdiction

under Article 227 of the Constitution of India, cannot be a mute spectator and refuse to entertain a revision petition. High Court, should step in and correct the manifest injustice. We cannot subscribe to the directions of the Appellate Tribunal to dismiss Original Application. Order requires to be set aside. Accordingly, set aside.

31. Mr.Srinath Sridevan, learned counsel for the petitioner submitted that statement of accounts, though could not be made within 15 days, but with a delay of nine days and before the dismissal of Original application, the same was submitted to DRT, but due to the limitation imposed in the order of DRAT, Chennai, the same was not accepted.

32. Petitioner is directed to place the order of this court before the DRAT, Chennai in R.A. (S.A.) No.7 of 2016. Petitioner is directed to submit the statement of accounts to the Tribunal.

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S.MANIKUMAR, J.
AND
R.SURESH KUMAR, J.

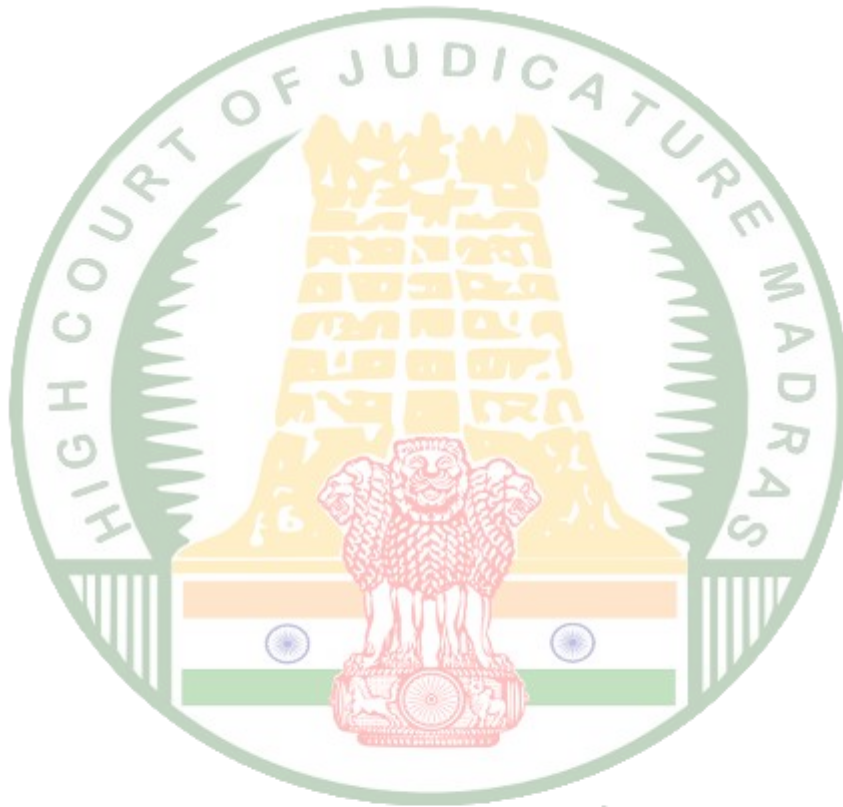
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33. Accordingly, the Civil Revision Petition is allowed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

[S.M.K., J.] [R.S.K., J.]
24.11.2017

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Internet : Yes
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